

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: OFFICE OF CONSUMER ADVOCATE, Complainant, vs. McLEODUSA TELECOMMUNICATIONS, INC., Respondent.	DOCKET NO. FCU-03-4 (C-02-412)
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**ORDER DENYING PETITION FOR PROCEEDING
TO IMPOSE CIVIL PENALTY**

(Issued June 18, 2003)

On January 9, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to impose civil penalties pursuant to Iowa Code § 476.103, asking that the Board review the proposed resolution issued in C-02-412, involving McLeodUSA Telecommunications, Inc. (McLeodUSA), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

By letter dated November 25, 2002, Marsha R. Snyder of Ottumwa, Iowa, filed a complaint with the Board against McLeodUSA. Ms. Snyder alleged that she canceled her phone service with McLeodUSA on August 21, 2002, but continued to receive monthly statements. Ms. Snyder also asserted that she had been charged \$95 for an inside wiring repair which she did not authorize.

By letter dated December 18, 2002, McLeodUSA responded to the complaint, stating that its records showed that on August 24, 2002, Ms. Snyder authorized the charge of \$95.00 for a technician to come to her home to investigate a “ringer off hook.” McLeodUSA states that its records indicate that a technician was sent to her home and found that “the line was testing good at the dmarc and the problem was isolated to inside wiring.”

McLeodUSA also states that on August 27, 2002, Ms. Snyder contacted McLeodUSA to report that she did not have a dial tone. McLeodUSA asserts that it offered Ms. Snyder credit at that time to continue as a McLeodUSA customer, which Ms. Snyder accepted.

McLeodUSA asserts that on September 29, 2002, Ms. Snyder contacted McLeodUSA to dispute the \$95.00 charge assessed for the aforementioned technician issue. According to McLeodUSA, Ms. Snyder wanted her service disconnected. McLeodUSA states that it disconnected Ms. Snyder’s service on October 8, 2002, and that Ms. Snyder would have received credit for any local

charges incurred after that date. In an effort to bring this matter to a successful resolution, McLeodUSA also issued a credit for the \$95 technician charge.

On December 26, 2002, Board staff issued a proposed resolution describing these events and proposing that the credits offered by McLeodUSA represented a fair resolution of the situation. No other party other than Consumer Advocate has challenged the staff's proposed resolution.

Consumer Advocate argues that with respect to the \$95 charge assessed to Ms. Snyder, McLeodUSA violated Iowa's anti-cramming statute, Iowa Code § 476.103, by failing to obtain the appropriate authorization for the charge.

The Board does not agree with Consumer Advocate's analysis of § 476.103. Many cramming cases, like this one, appear to be the result of isolated errors that will not be deterred by civil penalties. In such cases, the appropriate resolution is to make the customer whole (since the errors are clearly not the customer's) at the expense of the carrier that committed the error.

Iowa Code § 476.3 (2003) requires that the Board grant a request to initiate a formal proceeding if there is any reasonable ground for investigating the complaint. Consumer Advocate has not offered any reasonable ground for further investigation of this matter. The request for a proceeding to impose civil penalties fails to address the proposed resolution or to request, or even suggest, any specific remedy beyond what has already been done. In the absence of any such request, there is no basis for further investigation of this matter.

The Board finds that a formal proceeding to consider civil penalties should only be initiated when there are reasonable grounds for further investigation. In the absence of such a reason, it would be a waste of resources to conduct a formal proceeding.

Based on the circumstances described above, the Board will deny Consumer Advocate's petition to docket this matter as a formal complaint proceeding.

IT IS THEREFORE ORDERED:

The "Petition For Proceeding To Impose Civil Penalty" filed on January 9, 2003, by the Consumer Advocate Division of the Department of Justice is denied.

UTILITIES BOARD

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18th day of June, 2003.